

SENATE, No. 1254

STATE OF NEW JERSEY
217th LEGISLATURE

INTRODUCED FEBRUARY 8, 2016

Sponsored by:
Senator JOSEPH F. VITALE
District 19 (Middlesex)

SYNOPSIS

Authorizes creation of economic recovery districts; authorizes certain economic recovery district management corporations to issue bonds secured by incentive grants.

CURRENT VERSION OF TEXT

As introduced.



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2

1 AN ACT authorizing certain measures to encourage economic
2 development, amending and supplementing P.L.2009, c.90.

3

4 **BE IT ENACTED** by the Senate and General Assembly of the State
5 of New Jersey:

6

7 1. Section 4 of P.L.2009, c.90 (C.52:27D-489d) is amended to
8 read as follows:

9 4. a. The governing body of a municipality wherein is located
10 a qualifying economic redevelopment and growth grant incentive
11 area may adopt an ordinance to establish a local Economic
12 Redevelopment and Growth Grant program for the purpose of
13 encouraging redevelopment projects in that area through the
14 provision of incentive grants to reimburse developers for all or a
15 portion of the project financing gap for such projects. No local
16 Economic Redevelopment and Growth Grant program shall take
17 effect until the Local Finance Board approves the ordinance.

18 b. A developer shall submit an application for a local incentive
19 grant prior to July 1, 2019. A developer that submits an application
20 for a local incentive grant shall indicate on the application whether
21 it is also applying for a State incentive grant. An application by a
22 developer applying for a local incentive grant only shall not require
23 approval by the authority. **[A]** Except as provided in subsection e.
24 of this section, a municipal redeveloper may only apply for local
25 incentive grants for the construction of: (1) infrastructure
26 improvements in the public right-of-way, or (2) publicly owned
27 facilities.

28 c. No local incentive grant shall be finally approved by a
29 municipality until approved by the Local Finance Board. The Local
30 Finance Board shall not approve a local incentive grant unless the
31 application was submitted prior to July 1, 2019.

32 d. In deciding whether or not to approve a local incentive grant
33 agreement the Local Finance Board shall consider the following
34 factors:

- 35 (1) the economic feasibility of the redevelopment project;
36 (2) the extent of economic and related social distress in the
37 municipality and the area to be affected by the redevelopment
38 project;
39 (3) the degree to which the redevelopment project will advance
40 State, regional, and local development and planning strategies;
41 (4) the likelihood that the redevelopment project shall, upon
42 completion, be capable of generating new tax revenue in an amount
43 in excess of the amount necessary to reimburse the developer for
44 project costs incurred as provided in the redevelopment incentive
45 grant agreement;

EXPLANATION – Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

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1 (5) the relationship of the redevelopment project to a
2 comprehensive local development strategy, including other major
3 projects undertaken within the municipality;

4 (6) the need for the redevelopment incentive grant agreement to
5 the viability of the redevelopment project;

6 (7) compliance with the provisions of P.L.2009,
7 c.90 (C.52:27D-489a et al.); and

8 (8) the degree to which the redevelopment project enhances and
9 promotes job creation and economic development.

10 e. Notwithstanding subsection b. of this section, a local
11 incentive grant may provide assistance to a developer in order to
12 enhance its credit for the purpose of securing private financing, or
13 the grant may provide assistance to the developer or economic
14 recovery district, as defined in section 4 of P.L. _____,
15 c. (C.) (pending before the Legislature as this bill) as payment or
16 security for bonds or negotiable instruments issued pursuant to
17 section 7 of P.L. _____, c. (C.) (pending before the Legislature as this
18 bill).

19 (cf: P.L.2013, c.161, s.15)

20

21 2. Section 10 of P.L.2009, c.90 (C.52:27D-489j) is amended to
22 read as follows:

23 10. a. The New Jersey Economic Development Authority, or
24 any other State agency, may provide assistance to a developer in
25 order to enhance its credit for the purpose of securing private
26 project financing on more favorable terms.

27 b. For purposes of this section, "assistance" may include
28 authorizing the use of grant proceeds by a developer or economic
29 recovery district, as defined in section 4 of P.L. _____,
30 c. (C.) (pending before the Legislature as this bill) as payment or
31 security for bonds or negotiable instruments issued pursuant to
32 section 7 of P.L. _____, c. (C.) (pending before the Legislature as this
33 bill).

34 (cf: P.L.2009, c.90, s.10)

35

36 3. Section 12 of P.L.2009, c.90 (C.52:27D-489l) is amended to
37 read as follows:

38 12. a. A municipality may adopt an ordinance creating a
39 municipal redevelopment utility under the name and style of "the
40 _____ redevelopment utility," with all or any significant part
41 of the name of the municipality inserted. The redevelopment utility
42 shall be a municipal public utility for the purposes of Title 40A of
43 the New Jersey Statutes.

44 b. The purpose of every redevelopment utility shall be to
45 receive revenues collected pursuant to section 11 of P.L.2009,
46 c.90 (C.52:27D-489k) and to use those revenues as payment of
47 incentive grants, and for other local purposes that may be approved

1 by the Local Finance Board, as that board deems necessary or
2 useful.

3 c. If a municipality does not create a municipal redevelopment
4 utility, then any revenues collected pursuant to section 11 of
5 P.L.2009, c.90 (C.52:27D-489k) and any grants received to pay
6 incentive grants shall be treated as riders in the municipal budget
7 pursuant to N.J.S.40A:4-36.

8 d. A municipal redevelopment utility that is designated as a
9 economic recovery district management corporation, as defined in
10 section 4 of P.L. , c. (C.) (pending before the Legislature as this
11 bill) shall have the authority to issue and assign bonds, pursuant to
12 pursuant to section 7 of P.L. , c. (C.) (pending before the
13 Legislature as this bill).

14 (cf: P.L.2009, c.90, s.12)

15

16 4. (New section) For purposes of P.L. ,
17 c. (C.) (pending before the Legislature as this bill):

18 "Agreement" means a financial agreement for a payment in lieu
19 of taxes.

20 "Developer" means a developer as defined in section 3 of
21 P.L.2009, c.90 (C.52:27D-489c).

22 "Economic recovery district management corporation" means an
23 entity authorized and created by municipal ordinance or
24 incorporated pursuant to Title 15A of the New Jersey Statutes and
25 pursuant to section 5 of P.L. , c. (C.) (pending before the
26 Legislature as this bill) and which may be designated by municipal
27 ordinance to levy and collect a special assessment within a special
28 improvement district, and may include a municipal redevelopment
29 utility established pursuant to section 12 of P.L.2009,
30 c.90 (C.52:27D-489l).

31 "Economic recovery district" or "district" means a district
32 designated by a municipality, by ordinance, pursuant to section 5 of
33 P.L. , c. (C.) (pending before the Legislature as this bill) to
34 promote the economic revitalization of the municipality through the
35 encouragement of a project financed in part by an incentive grant
36 received as part of the Economic Redevelopment and Growth Grant
37 program established pursuant to P.L.2009, c.90 (C.52:27D-489a et
38 al.).

39 "Improvement" means the purchasing, leasing, condemning, or
40 otherwise acquiring of land or other property, or an interest therein,
41 in the economic recovery district or as necessary for a right-of-way
42 or other easement to or from the district; the relocating and moving
43 of persons displaced by the acquisition of land or property; the
44 rehabilitation and redevelopment of land or property, including
45 demolition, clearance, removal, relocation, renovation, alteration,
46 construction, reconstruction, installation or repair of a building,
47 street, highway, alley, service or other structure or improvement;
48 the acquisition, construction, reconstruction, rehabilitation, or

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1 installation of parking and other public facilities and improvements,
2 except buildings and facilities for the general conduct of
3 government and schools; and the costs associated therewith
4 including the costs of an appraisal, economic and environmental
5 analyses or engineering, planning, design, architectural, surveying
6 or other professional services necessary to effectuate the
7 improvement.

8 "Incentive grant" means an incentive grant as defined in section
9 3 of P.L.2009, c.90 (C.52:27D-489c).

10 "Special assessment" means an assessment upon the lands or
11 improvements on such lands, or both, in the economic recovery
12 district benefitted by improvements undertaken pursuant to
13 P.L. , c. (C.) (pending before the Legislature as this bill) that
14 are assessed pursuant to chapter 56 of Title 40 of the Revised
15 Statutes, R.S.40:56-1 et seq. except as otherwise provided in
16 P.L. , c. (C.) (pending before the Legislature as this bill).

17

18 5. (New section) a. A municipality that has adopted or adopts
19 an ordinance authorizing the establishment of a special
20 improvement district pursuant to section 7 of P.L.1972,
21 c.134 (C.40:56-71), and in which there is a redevelopment project
22 receiving assistance from an incentive grant received as part of a
23 State or local Economic Recovery and Growth Grant program
24 established pursuant to P.L.2009, c.90 (C.52:27D-489a et al.), may
25 designate, by ordinance, any portion or all of that district containing
26 the redevelopment project for which a developer is receiving
27 assistance as an economic recovery district. A municipality may
28 create, by separate ordinances, more than one district.

29 b. The governing body of a municipality creating an economic
30 recovery district pursuant to this section shall establish an economic
31 recovery district management corporation to provide administrative
32 and other services to benefit the businesses, employees, residents,
33 and consumers in the special improvement district. The mayor or
34 other chief executive officer of the municipality shall appoint the
35 economic recovery district management corporation consisting of
36 seven or more persons, at least a majority of whom shall be owners
37 or occupants of properties adjoining a pedestrian mall or included in
38 a special improvement district, as the case may be, or
39 representatives of these owners or occupants, to advise the
40 governing body in connection with the acquisition, construction,
41 and improvement of a pedestrian mall, or the acquisition and
42 construction of improvements for a special improvement district.
43 No economic recovery district management corporation shall
44 receive any funds or exercise any powers pursuant to the provisions
45 of P.L. , c. (C.) (pending before the Legislature as this bill),
46 unless the board of directors of that corporation shall include at
47 least one member of the governing body of the municipality.

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1 6. (New section) a. A municipality that has established an
2 economic recovery district pursuant to section 5 of P.L. ,
3 c. (C.) (pending before the Legislature as this bill) may adopt an
4 ordinance to authorize an economic recovery district management
5 corporation to levy and collect, within the district, a special
6 assessment that shall not exceed the difference between the
7 incentive grant and the debt service for any bonds issued by the
8 economic recovery district management corporation pursuant to
9 section 7 of P.L. , c. (C.) (pending before the Legislature as this
10 bill) in a given year. The special assessment shall be levied for the
11 purpose of addressing debt service covering interest or principal, or
12 both, on any bonds issued by the economic recovery district
13 management corporation pursuant to section 7 of P.L. ,
14 c. (C.) (pending before the Legislature as this bill),

15 b. The ordinance shall be a valid and binding ordinance of the
16 municipality. The ordinance shall continue in force and effect until
17 repealed by the governing body. The municipality may also
18 provide and covenant by ordinance that the ordinance authorizing
19 the special assessment will not be amended so as to repeal or reduce
20 the special assessment while bonds issued pursuant to section 7 of
21 P.L. , c. (C.) (pending before the Legislature as this bill) are
22 outstanding, unless the resolution authorizing the bonds shall
23 provide otherwise. Such covenant shall constitute a valid and
24 legally binding contract between the municipality and bondholders.
25

26 7. (New section) a. In addition to the powers granted to a
27 district management corporation pursuant to section 17 of P.L.1984,
28 c.151 (C.40:56-83), an economic recovery district management
29 corporation that is a municipal redevelopment utility, created
30 pursuant to section 12 of P.L.2009, c.90 (C.52:27D-4891) shall
31 have the power to issue negotiable bonds or other obligations
32 secured by an incentive grant received by a project and by a special
33 assessment authorized by ordinance in accordance with section 6 of
34 P.L. , c. (C.) (pending before the Legislature as this bill).
35 Bonds so issued shall be to provide financing, refinancing, or
36 reimbursement for the cost of the design, construction, establishment,
37 extension, alteration, or acquisition of adequate storm drainage
38 systems, sewers, water systems, roads, bridges, culverts, tunnels,
39 streets, sidewalks, lighting, parking, parks and recreation facilities,
40 libraries, schools, transit facilities, solid waste facilities, convention
41 centers, conference centers, visitors' centers, infrastructure
42 improvements located in or supporting a transit-oriented development,
43 renovation, rehabilitation, and repair of existing buildings, building
44 systems, and components for existing residential condominiums
45 designated as affordable housing and other infrastructure
46 improvements as necessary, whether situated within the special taxing
47 district or outside the economic recovery district if the infrastructure
48 improvement is reasonably related to other improvements within the

1 special taxing district, for the development and utilization of the land,
2 each with respect to any defined geographic region within the
3 economic recovery district.

4 b. To implement the authority to issue bonds conferred upon the
5 district management corporation by this section, the governing body of
6 the municipality in which the economic recovery district is located
7 shall adopt an ordinance or resolution that:

8 (1) Specifies and describes the proposed undertaking;

9 (2) Specifies the maximum principal amount of bonds to be issued;
10 and

11 (3) Agrees to a covenant to levy upon all real and personal
12 property within the special taxing district special taxes in rate and
13 amount at least sufficient in each year in which any of the bonds are
14 outstanding to provide for the payment of the principal of and the
15 interest on the bonds.

16 c. The bonds and notes issued by the district management
17 corporation pursuant to this section shall be non-recourse
18 obligations, and shall not be direct and general obligations of the
19 municipality, and the municipality shall not be obligated to levy and
20 collect a tax sufficient in an amount to pay the principal and interest
21 on the bonds and notes when the same become due and payable.
22 The provisions of the "Local Government Supervision Act (1947),"
23 P.L.1947, c.151 (C.52:27BB-1 et seq.) shall not apply to any bonds
24 or other obligations issued or authorized pursuant to this section and
25 those bonds or other obligations shall not be considered gross debt
26 of the municipality on any debt statement filed in accordance with
27 the "Local Bond Law," N.J.S.40A:2-1 et seq., and the provisions of
28 chapter 27 of Title 52 of the Revised Statutes shall not apply to
29 such bonds.

30 d. The proceeds of any incentive grant or payments in lieu of
31 taxes made by a developer under an agreement authorized pursuant
32 to the Economic Redevelopment and Growth Grant program and
33 special assessments may be assigned directly to the corporation or
34 the trustee for the bonds as payment or security for the bonds.
35 Notwithstanding any law to the contrary, the assignment shall be an
36 absolute assignment of all the municipality's right, title, and interest
37 in the payment in lieu of taxes and special assessments, or portion
38 thereof, along with the rights and remedies provided to the
39 municipality under the agreement including, but not limited to, the
40 right of collection of payments due. Payments in lieu of taxes and
41 special assessments shall not be included in the general funds of the
42 municipality, nor shall they be subject to any laws regarding the
43 receipt, deposit, investment or appropriation of public funds and
44 shall retain such status notwithstanding enforcement of the payment
45 or assessment by the municipality or assignee as provided herein.

46 e. The proceeds from the sale of the bonds and any funds
47 provided by any department of the State, or by any authority created
48 by the State or bi-state authority, shall not require compliance with

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1 public bidding laws, including the "Local Public Contracts Law,"
2 P.L.1971, c.198 (C.40A:11-1 et seq.), or any other statute, when the
3 redeveloper shall undertake any improvements described in
4 subsection a. of this section.

5
6 8. (New section) The special assessment levied and collected
7 by the economic recovery district shall be appropriated to any
8 shortfall between the debt service and the incentive grant in a given
9 year. In any year in which a portion of the special assessment
10 collected annually is not appropriated or expended by the district
11 for this purpose, the assessment shall be expended for an
12 improvement in the district as defined in section 4 of P.L. ,
13 c. (C.) (pending before the Legislature as this bill).

14
15 9. (New section) a. The special assessments required to be
16 paid to the economic recovery district management corporation
17 pursuant to section 6 of P.L. , c. (C.) (pending before the
18 Legislature as this bill) shall be a continuous lien on the land
19 against which the ordinance is recorded on and after the date of
20 recordation of the ordinance. All subsequent assessment payments,
21 interest, penalties, and costs of collection which thereafter fall due
22 or accrue shall be added and relate back to and be a part of the
23 initial lien. Upon recordation of the ordinance and agreement,
24 payments in lieu of taxes shall constitute a municipal lien within the
25 meaning, and for all purposes, of law.

26 b. If revenue bonds or other obligations are issued by the
27 corporation in order to finance or refinance the construction,
28 reconstruction, repair, alteration, improvement, and development of
29 any infrastructure, or parking or transportation facilities, or work
30 that reduces, abates or prevents environmental pollution, or other
31 improvements that provide a public benefit within or to an
32 economic recovery district in accordance with section 7 of
33 P.L. , c. (C.) (pending before the Legislature as this bill), the
34 municipality or the redeveloper may record, either simultaneously
35 or at different times, any ordinance adopted by the municipality
36 relating to the payment in lieu of taxes agreement or special
37 assessments and, either simultaneously with the ordinance or at
38 different times, a copy of the agreement or agreements. The
39 ordinance, when recorded, shall contain a legend at the top of the
40 front page substantially as follows:

41 "THIS ORDINANCE SECURES BONDS OR OTHER
42 OBLIGATIONS ISSUED IN ACCORDANCE WITH THE
43 PROVISIONS OF P.L. , c. (C.) (pending before the
44 Legislature as this bill) AND THE LIEN HEREOF IN FAVOR OF
45 THE OWNERS OF SUCH BONDS OR OTHER OBLIGATIONS
46 IS A MUNICIPAL LIEN SUPERIOR TO ALL OTHER NON-
47 MUNICIPAL LIENS HEREAFTER RECORDED."

1 c. Notwithstanding any law to the contrary, upon recordation
2 of both the ordinance and any accompanying agreement and upon
3 the issuance of bonds or other obligations, the lien thereof shall be
4 perfected for all purposes in accordance with law and the lien shall
5 thereafter be superior to all non-municipal liens thereafter recorded
6 or otherwise arising, without any additional notice, recording,
7 filing, continuation filing, or action, until the payment in full of the
8 bonds or other obligations. The lien thereby established shall apply
9 not only to the bonds and other obligations initially issued, but also
10 to any refinancing or refunding thereof, as well as to any additional
11 bonds and other obligations thereafter issued on a parity therewith
12 in accordance with the provisions of the original documents
13 securing the initial bonds and other obligations; provided, however,
14 that in the event any ordinance or agreement is amended or
15 supplemented in a way which increases the amount of payments in
16 lieu of taxes or special assessments, the lien as to that increase shall
17 be perfected and apply upon the recordation of the amended or
18 supplemented ordinance and agreement (including the above-recited
19 legend). Except as set forth in this section, no amendment or
20 supplement to the ordinance or agreement thereafter recorded shall
21 affect the perfection or priority of the lien established upon original
22 recordation thereof.

23 d. Upon the final payment in full of any bonds or other
24 obligations secured as provided in this section and section 7 of
25 P.L. , c. (C.), the lien established hereby shall terminate, and
26 the municipality shall record a notice to that effect.

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28 10. This act shall take effect immediately.

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STATEMENT

33 In July 2009, the New Jersey Legislature enacted the “Economic
34 Stimulus Act of 2009,” N.J.S.A.52:27D-489a et al., which
35 established the Economic Redevelopment and Growth (“ERG”)
36 grant program. The program provides incentive grants to
37 developers that reimburse a portion of taxes generated through new
38 development projects. This bill would supplement and amend the
39 Stimulus Act to authorize municipalities to monetize the income
40 stream provided by the ERG up front, creating a powerful tool to
41 encourage desirable new development.

42 Under this legislation, a municipality may establish a special
43 improvement district covering an area containing a project that has
44 received a redevelopment incentive grant as part of an ERG
45 program. By ordinance, a special assessment lien levied on the
46 project would secure the project’s obligation to cover any shortfall
47 between the incentive grant and debt service on bonds issued by the
48 district utility. In the event that revenues reimbursed to the

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1 developer as part of the grant are less than debt service, which
2 would be especially likely in the early years of the project, the
3 special assessment obligation would be triggered. If the special
4 assessment obligation goes unpaid, a lien on the property superior
5 to other liens is created. Ultimately, lenders have a remedy to
6 recover those shortfall payments through the tax foreclosure
7 process. Under this system, the developer of the redevelopment
8 project assumes the risk of any shortfall in tax increment revenues.
9 As the party solely in position to successfully implement the
10 project, the project developer either benefits from the ERG or
11 suffers the shortfall for failure.